

TITLE 10.—ARMED FORCES

Chapter 2.—DEPARTMENT OF DEFENSE

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1200 § 114. Annual authorization of appropriations.

(a) No funds may be appropriated for any fiscal year to or for the use of any armed force or obligated or expended for—

- (1) procurement of aircraft, missiles, or naval vessels;
- (2) any research, development, test, or evaluation, or procurement or production related thereto;
- (3) procurement of tracked combat vehicles;
- (4) procurement of other weapons;
- (5) procurement of naval torpedoes and related support equipment;
- (6) military construction;
- (7) the operation and maintenance of any armed force or of the activities and agencies of the Department of Defense (other than the military departments);
- (8) procurement of ammunition; or
- (9) other procurement by any armed force or by the activities and agencies of the Department of Defense (other than the military departments);

unless funds therefor have been specifically authorized by law.

(b) In subsection (a)(6), the term “military construction” includes any construction, development, conversion, or extension of any kind which is carried out with respect to any military facility or installation (including any Government-owned or Government-leased industrial facility used for the production of defense articles and any facility to which section 2353 of this title applies), any activity to which section 2807 of this title applies, any activity to which chapter 1803 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23. Such term does not include any activity to which section 2821 or 2854 of this title applies.

(c)(1) The size of the Special Defense Acquisition Fund established pursuant to chapter 5 of the Arms Export Control Act (22 U.S.C. 2795 et seq.) may not exceed \$1,070,000,000.

(2) Notwithstanding section 37(a) of the Arms Export Control Act (22 U.S.C. 2777(a)), amounts received by the United States pursuant to subparagraph (A) of section 21(a)(1) of that Act (22 U.S.C. 2761(a)(1)—

(A) shall be credited to the Special Defense Acquisition Fund established pursuant to chapter 5 of that Act (22 U.S.C. 2795 et seq.), as authorized by section 51(b)(1) of that Act (22 U.S.C. 2795(b)(1)), but subject to the limitation in paragraph (1) and other applicable law; and

(B) to the extent not so credited, shall be deposited in the Treasury as miscellaneous receipts as provided in section 3302(b) of title 31.

(d) Funds may be appropriated for the armed forces for use as an emergency fund for research, development, test, and evaluation, or re-

lated procurement or production, only if the appropriation of the funds is authorized by law after June 30, 1966.

(e) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of equipment for the reserve components of the armed forces (including the National Guard) shall be set forth separately from other amounts requested for procurement for the armed forces.

(f) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of ammunition for the Navy and Marine Corps, and for procurement of ammunition for the Air Force, shall be set forth separately from other amounts requested for procurement. (Added Nov. 16, 1973, Pub.L. 93-155, Title VIII, § 803(a), 87 Stat. 612; Oct. 7, 1975, Pub.L. 94-106, Title VIII, § 801(a), 89 Stat. 537; July 14, 1976, Pub.L. 94-361, Title III, § 302, 90 Stat. 924; Nov. 9, 1979, Pub.L. 96-107, Title III, § 303(b), 93 Stat. 806; Sept. 8, 1980, Pub.L. 96-342, Title X, § 1001(a)(1), (b), (c), (d)(1), 94 Stat. 1117; Dec. 12, 1980, Pub.L. 96-513, Title I, § 102, Title V, Part B, § 511(4), 94 Stat. 2840, 2920; July 10, 1981, Pub.L. 97-22, § 2(b), 95 Stat. 124; Dec. 1, 1981, Pub.L. 97-86, Title III, § 302, Title IX, §§ 901(a), 902, 903, 95 Stat. 1104, 1113; Dec. 29, 1981, Pub.L. 97-113, Title I, § 108(b), 95 Stat. 1524; July 12, 1982, Pub.L. 97-214, § 4, 96 Stat. 170; Sept. 8, 1982, Pub.L. 97-252, Title IV, § 402(a), Title XI, §§ 1103, 1105, 96 Stat. 725, 738; Oct. 12, 1982, Pub.L. 97-295, § 1(3), (4), 96 Stat. 1289; Oct. 19, 1984, Pub.L. 98-525, Title XIV, § 1405(2), 98 Stat. 2621; Nov. 8, 1985, Pub.L. 99-145, Title XII, Part A, § 1208, Title XIV, Part A, § 1403, 99 Stat. 723, 743; Oct. 1, 1986, Pub.L. 99-433, Title I, §§ 101(a)(2) in part, 110(b), 100 Stat. 994, 1002; Nov. 14, 1986, Pub.L. 99-661, Div. A, Title I, Part A, § 105(d), Title XIII, Part A, § 1304(a), 100 Stat. 3827, 3979; Apr. 21, 1987, Pub.L. 100-26, § 7(j)(1), 101 Stat. 282; Dec. 4, 1987, Pub.L. 100-180, Div. A, Title XII, Part A, § 1203, 101 Stat. 1154; Nov. 29, 1989, Pub.L. 101-189, Div. A, Title XVI, Part A, § 1602(b), 103 Stat. 1597; Nov. 5, 1990, Pub.L. 101-510, Div. A, Title XIV, Part H, § 1481(a)(1), 104 Stat. 1704; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XV, § 1501(c)(2), 110 Stat. 498; Sept. 23, 1996, Pub.L. 104-201, Div. A, Title X, Subtitle A, § 1005, 110 Stat. 2632.)

§ 115. Personnel strengths: requirement for annual authorization. 1201

(a) Active-Duty and Selected Reserve End Strengths To Be Authorized by Law.—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

(1) The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel who are to be paid from funds appropriated for active-duty personnel, unless on active duty pursuant to subsection (b) and (B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel unless on active duty or full-time National Guard duty pursuant to subsection (b).

(2) The end strength for the Selected Reserve of each reserve component of the armed forces.

(b) Certain Reserves on Active Duty To Be Authorized by Law.—

(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—

(A) active duty under section 12301(d) of the title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;

(B) full-time National Guard duty under section 502(f)(2) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;

(C) active duty under section 12301(d) of this title or full-time National Guard duty under section 502(f)(2) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or

(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.

(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (8) of subsection (i).

(c) Limitation on Appropriations for Military Personnel.—No funds may be appropriated for any fiscal year to or for—

(1) the use of active-duty personnel or full-time National Guard duty personnel of any of the armed forces (other than the Coast Guard) unless the end strength for such personnel of that armed force for that fiscal year has been authorized by law;

(2) the use of the Selected Reserve of any reserve component of the armed forces unless the end strength for the Selected Reserve of that component for that fiscal year has been authorized by law; or

(3) the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.

(d) Military Technician (Dual Status) End Strengths To Be Authorized by Law.—Congress shall authorize for each fiscal year the end strength for military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title. In each budget sub-

mitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.

(e) End-of-Quarter Strength Levels.—(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year. Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under subsection (a) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

(2)(A) After annual end-strength levels required by subsections (a) and (d) are authorized by law for a fiscal year, the Secretary of Defense shall promptly prescribe end-of-quarter strength levels for the first three quarters of that fiscal year applicable to each such end-strength level. Such end-of-quarter strength levels shall be established for any fiscal year as levels to be achieved in meeting each of those annual end-strength levels authorized by law in accordance with subsection (a) (as such levels may be adjusted pursuant to subsection (f) and subsection (d)).

(B) At least annually, the Secretary of Defense shall establish for each of the armed forces (other than the Coast Guard) the maximum permissible variance of actual strength for an armed force at the end of any given quarter from the end-of-quarter strength established pursuant to subparagraph (A). Such variance shall be such that it promotes the maintaining of the strength necessary to achieve the end-strength levels authorized in accordance with subsection (a) (as adjusted pursuant to subsection (f) and subsection (d)).

(3) Whenever the Secretary establishes an end-of-quarter strength level under subparagraph (A) of paragraph (2), or modifies a strength level under the authority provided in subparagraph (B) of paragraph (2), the Secretary shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that strength level or of that modification, as the case may be.

(f) Authority for Secretary of Defense Variances for Active Duty and Selected Reserve Strengths.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may—

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 3 percent of that end strength;

(2) increase the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength;

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any of the reserve components by a number equal to not more than 2 percent of that end strength; and

(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty for any of the reserve components by a number equal to not more than 10 percent of that strength.

(g) Authority for Service Secretary Variances for Active-Duty End Strengths.—Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that Secretary. Any such increase for a fiscal year—

(1) shall be by a number equal to not more than 2 percent of such authorized end strength; and

(2) shall be counted as part of the increase for that armed force for that fiscal year authorized under subsection (f)(1).

(h) Adjustment When Coast Guard is Operating as a Service in the Navy.—The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

(i)¹ Certain Personnel Excluded from Counting for Active-Duty End Strengths.—In counting personnel for the purpose of the end-strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

(1) Members of a reserve component ordered to active duty under section 12301(a) of this title.

(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.

(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.

(5) Members of the National Guard called into Federal service under section 12406 of this title.

(6) Members of the militia called into Federal service under chapter 15 of this title.

(7) Members of the National Guard on full-time National Guard duty under section 502(f)(1) of title 32.

(8) Members of reserve components on active duty for training or full-time National Guard duty for training.

(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(b)).

(10) Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

¹[Repealed. Pub.L. 109–364, Div. A, Title X, § 1071(a)(1)(A), Oct. 17, 2006, 120 Stat. 2398]

(11) Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(12) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.

(13) Members of the National Guard on full-time National Guard duty involuntarily and performing homeland defense activities under chapter 9 of title 32. (Added Pub.L. 101–510, Div. A, Title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1710, and amended Pub.L. 102–190, Div. A, Title III, §312(a), Dec. 5, 1991, 105 Stat. 1335; Pub.L. 104–106, Div. A, Title IV, §§401(c), 415, Title V, §513(a)(1), Title X, §1061(c), Title XV, §1501(c)(3), Feb. 10, 1996, 110 Stat. 286, 288, 305, 442, 498; Pub.L. 105–85, Div. A, Title IV, §413(b), Title V, §522(i)(1), Nov. 18, 1997, 111 Stat. 1720, 1736; Pub.L. 106–65, Div. A, Title IV, §415, Oct. 5, 1999, 113 Stat. 587; Pub.L. 106–398, §1, [Div. A, Title IV, §422], Oct. 30, 2000, 114 Stat. 1654, 1654A–96; Pub.L. 107–107, Div. A, Title IV, §§421(a), 422, Dec. 28, 2001, 115 Stat. 1076, 1077; Pub.L. 107–314, Div. A, Title IV, §403, Dec. 2, 2002, 116 Stat. 2525; Pub.L. 108–136, Div. A, Title IV, §403(a), (b), Nov. 24, 2003, 117 Stat. 1450; Pub.L. 108–375, Div. A, Title IV, §416(a) to (d), Title V, §512(b), Oct. 28, 2004, 118 Stat. 1866, 1880; Pub.L. 109–364, Div. A, Title X, §1071(a)(1), (g)(1)(A), Oct. 17, 2006, 120 Stat. 2398, 2402.)

§ 115a. Annual manpower requirements report.

1202

(a) The Secretary of Defense shall submit to Congress an annual manpower requirements report. The report, which shall be in writing, shall be submitted each year not later than 45 days after the date on which the President submits to Congress the budget for the next fiscal year under section 1105 and of title 31. The report shall contain the Secretary's recommendations for—

(1) the annual active-duty end-strength level for each component of the armed forces for the next fiscal year; and

(2) the annual civilian personnel end-strength level for each component of the Department of Defense for the next fiscal year.

(b)(1) The Secretary shall include in each report under subsection (a) justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for that fiscal year and the national security policies of the United States in effect at the time.

(2) The justification and explanation shall specify in detail for all major military force units (including each land force division, carrier and other major combatant vessel, air wing, and other comparable unit) the following:

(A) Unit mission and capability.

(B) Strategy which the unit supports.

(3) The justification and explanation shall also specify in detail the manpower required to perform the medical missions of each of the armed forces and of the Department of Defense.

(c) The Secretary shall include in each report under subsection (a) a detailed discussion of the following:

- (1) The manpower required for support and overhead functions within the armed forces and the Department of Defense.
- (2) The relationship of the manpower required for support and overhead functions to the primary combat missions and support policies.
- (3) The manpower required to be stationed or assigned to duty in foreign countries and aboard vessels located outside the territorial limits of the United States, its territories, and possessions.
- (d) The Secretary shall also include in each such report, with respect to each armed force under the jurisdiction of the Secretary of a military department, the following:
 - (1) The number of positions that require warrant officers or commissioned officers serving on active duty in each of the officer grades during the current fiscal year and the estimated number of such positions for each of the next five fiscal years.
 - (2) The estimated number of officers that will be serving on active duty in each grade on the last day of the current fiscal year and the estimated numbers of officers that will be needed on active duty on the last day of each of the next five fiscal years.
 - (3) An estimate and analysis for the current fiscal year and for each of the next five fiscal years of gains to and losses from the number of members on active duty in each officer grade, including a tabulation of—
 - (A) retirements displayed by year of active commissioned service;
 - (B) discharges;
 - (C) other separations;
 - (D) deaths;
 - (E) promotions; and
 - (F) reserve and regular officers ordered to active duty.
- (e)(1) In each such report, the Secretary shall also include recommendations for the end-strength levels for medical personnel for each component of the armed forces as of the end of the next fiscal year.
- (2) For purposes of this subsection, the term “medical personnel” includes—
 - (A) in the case of the Army, members of the Medical Corps, Dental Corps, Nurse Corps, Medical Service Corps, Veterinary Corps, and Army Medical Specialist Corps;
 - (B) in the case of the Navy, members of the Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps;
 - (C) in the case of the Air Force, members designated as medical officers, dental officers, Air Force nurses, medical service officers, and biomedical science officers;
 - (D) enlisted members engaged in or supporting medically related activities; and
 - (E) such other personnel as the Secretary considers appropriate.
- (f) Repealed (Pub.L. 104–106, Div. A, Title X, § 1061(d)(4), Feb. 10, 1996, 110 Stat. 442).
- (g) Redesignated (e).
- (h) In each such report, the Secretary shall include a separate report on the Army and Air Force military technician programs. The report shall include a presentation, shown by reserve component and shown both as of the end of the preceding fiscal year and for the next fiscal

year, of the following (displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians):

(1) The number of military technicians required to be employed (as specified in accordance with Department of Defense procedures), the number authorized to be employed under Department of Defense personnel procedures, and the number actually employed.

(2) Within each of the numbers under paragraph (1)—

(A) the number applicable to a reserve component management headquarter organization; and

(B) the number applicable to high-priority units and organizations (as specified in section 10216(a) of this title). (Added Nov. 5, 1990, Pub.L. 101-510, Div. A, Title XIV, Part H, § 1483(a), 104 Stat. 1711; Dec. 5, 1991, Pub.L. 102-190, Div. A, Title X, Part E, § 1061(a)(1), 105 Stat. 1472; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title V, Subtitle B, § 513(e), Title X, Subtitle F, § 1061(d), 110 Stat. 307, 442; Nov. 18, 1997, Pub.L. 105-85, Div. A, Title V, Subtitle C, § 522(i)(2), 111 Stat. 1736; Oct. 17, 1998, Pub.L. 105-261, Div. A, Title IV, Subtitle A, § 403, 112 Stat. 1996.)

§ 116. Annual operations and maintenance report.

1203

(a)(1) The Secretary of Defense shall submit to Congress a written report, not later than February 15 of each fiscal year, with respect to the operations and maintenance of the Army, Navy, Air Force, and Marine Corps for the next fiscal year. The Secretary shall include in each such report recommendations for—

(A) the number of aircraft flying hours for the Army, Navy, Air Force, and Marine Corps for the next fiscal year, the number of ship steaming hours for the Navy for the next fiscal year, and the number of field training days for the combat arms battalions of the Army and Marine Corps for the next fiscal year;

(B) the number of ships over 3,000 tons (full load displacement) in each Navy ship classification on which major repair work should be performed during the next fiscal year; and

(C) the number of airframe reworks, aircraft engine reworks, and vehicle overhauls which should be performed by the Army, Navy, Air Force, and Marine Corps during the next fiscal year.

(2) The Secretary shall also include in each such report the justification for and an explanation of the level of funding recommended in the Budget of the President for the next fiscal year for aircraft flying hours, ship steaming hours, field training days for the combat arms battalions, major repair work to be performed on ships of the Navy, airframe reworks, aircraft engine reworks, and vehicle overhauls.

(b) In this section:

(1) The term “combat arms battalions” means armor, infantry, mechanized infantry, air assault infantry, airborne infantry, ranger, artillery, and combat engineer battalions and armored cavalry and air cavalry squadrons.

(2) The term “major repair work” means, in the case of any ship to which subsection (a) is applicable, any overhaul, modification, alteration, or conversion work which will result in a total cost to the United States of more than \$10,000,000. (Added Sept. 8, 1980, Pub.L. 96-342, Title X, § 1001(b)(3), (c)(2), 94 Stat. 1118; Dec. 12,

1980, Pub.L. 96–513, Title V, § 511(4)(B), 94 Stat. 2920; Dec. 1, 1981, Pub.L. 97–86, Title III, § 302, 95 Stat. 1104; Oct. 1, 1986, Pub.L. 99–433, Title I, §§ 101(a)(2), 110(b)(6), (7), (9), (10), 100 Stat. 994, 1002; Nov. 18, 1997, Pub.L. 105–85, Div. A, Title X, Subtitle G, § 1073(a)(3), 111 Stat. 1900.)

1204 § 119. Special access programs: congressional oversight.

(a)(1) Not later than March 1 of each year, the Secretary of Defense shall submit to the defense committees a report on special access programs.

(2) Each such report shall set forth—

(A) the total amount requested for special access programs of the Department of Defense in the President's budget for the next fiscal year submitted under section 1105 of title 31; and

(B) for each program in that budget that is a special access program—

(i) a brief description of the program;

(ii) a brief discussion of the major milestones established for the program;

(iii) the actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted; and

(iv) the estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(3) In the case of a report under paragraph (1) submitted in a year during which the President's budget for the next fiscal year, because of multiyear budgeting for the Department of Defense, does not include a full budget request for the Department of Defense, the report required by paragraph (1) shall set forth—

(A) the total amount already appropriated for the next fiscal year for special access programs of the Department of Defense and any additional amount requested in that budget for such programs for such fiscal year; and

(B) for each program of the Department of Defense that is a special access program, the information specified in paragraph (2)(B).

(b)(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the defense committees a report that, with respect to each new special access program, provides—

(A) notice of the designation of the program as a special access program; and

(B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term “new special access program” means a special access program that has not previously been covered in a notice and justification under this subsection.

(c)(1) Whenever a change in the classification of a special access program of the Department of Defense is planned to be made or whenever classified information concerning a special access program of the Department of Defense is to be declassified and made public, the Secretary of Defense shall submit to the defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.

(3) If the Secretary determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Department of Defense, the Secretary may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

(d) Whenever there is a modification or termination of the policy and criteria used for designating a program of the Department of Defense as a special access program, the Secretary of Defense shall promptly notify the defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

(e)(1) The Secretary of Defense may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the Secretary determines that inclusion of that information in the report would adversely affect the national security. Any such waiver shall be made on a case-by-case basis.

(2) If the Secretary exercises the authority provided under paragraph (1), the Secretary shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the defense committees.

(f) A special access program may not be initiated until—

(1) the defense committees are notified of the program; and

(2) a period of 30 days elapses after such notification is received.

(g) In this section, the term “defense committees” means—

(1) the Committee on Armed Services and the Committee on Appropriations, and the Defense Subcommittee of the Committee on Appropriations, of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations, of the House of Representatives. (Added Dec. 4, 1987, Pub.L. 100–180, Div. A, Title XI, Part D, § 1132(a)(1), 101 Stat. 1151; Nov. 5, 1990, Pub.L. 101–510, Div. A, Title XIV, Part F, § 1461, Part H, § 1482(a), 104 Stat. 1698, 1709; Feb. 10, 1996, Pub.L. 104–106, Div. A, Title X, Subtitle E, § 1055, Title XV,

§ 1502(a)(4), 110 Stat. 442, 502; Pub.L. 106–65, Div. A, Title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Dec. 28, 2001, Pub.L. 107–107, Div. A., Title X, § 1048(a)(2), 115 Stat. 1222.)

Chapter 9.—DEFENSE BUDGET MATTERS

1205 § 221. Future-years defense program: submission to Congress; consistency in budgeting.

(a) The Secretary of Defense shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years defense program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b). (Added Pub.L. 101–189, § 1602(a)(1), Nov. 29, 1989, 103 Stat. 1596; amended Pub.L. 101–510, § 1402(a), Nov. 5, 1990, 104 Stat. 1674; renumbered § 221 and amended Pub.L. 102–484, § 1002(c), Oct. 23, 1992, 106 Stat. 2480.)

1206 § 222. Future-years mission budget.

(a) Future-years mission budget

The Secretary of Defense shall submit to Congress for each fiscal year a future-years mission budget for the military programs of the Department of Defense. That budget shall be submitted for any fiscal year not later than 60 days after the date on which the President's budget for that fiscal year is submitted to Congress pursuant to section 1105 of title 31.

(b) Consistency with future-years defense program

The future-years mission budget shall be consistent with the future-years defense program required under section 221 of this title. In the future-years mission budget, the military programs of the Department of Defense shall be organized on the basis of major roles, missions, or forces of the Department of Defense.

(c) Relationship to other defense budget formats

The requirement in subsection (a) is in addition to the requirements in any other provision of law regarding the format for the presentation regarding military programs of the Department of Defense in the budget submitted pursuant to section 1105 of title 31 for any fiscal year. (Added Oct. 23, 1992, Pub.L. 102–484, Div. A, Title X, Subtitle A, § 1002(a)(2), 106 Stat. 2480; Oct. 5, 1994, Pub.L. 103–337, Div. A, Title X, Subtitle A, § 1004, 108 Stat. 2834.)

§ 226. Scoring of outlays.

1207

(a) Annual OMB/CBO report

Not later than April 1 of each year, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office shall submit to the Speaker of the House of Representatives and the Committees on Armed Services, Appropriations, and the Budget of the Senate a joint report containing an agreed resolution of all differences between—

(1) the technical assumptions to be used by the Office of Management and Budget in preparing estimates with respect to all accounts in major functional category 050 (National Defense) for the budget to be submitted to Congress in that year pursuant to section 1105 of title 31; and

(2) the technical assumptions to be used by the Congressional Budget Office in preparing estimates with respect to those accounts for that budget.

(b) Use of averages

If the two Directors are unable to agree upon any technical assumption, the report shall reflect the average of the relevant outlay rates or assumptions used by the two offices.

(c) Matters to be included

The report with respect to a budget shall identify the following:

(1) The agreed first-year and outyear outlay rates for each account in budget function 050 (National Defense) for each fiscal year covered by the budget.

(2) The agreed amount of outlays estimated to occur from unexpended appropriations made for fiscal years before the fiscal year that begins after submission of the report. (Added Pub.L. 102–190, Div. A, Title X, § 1002(a)(1), Dec. 5, 1991, 105 Stat. 1455, § 221; renumbered § 226, Pub.L. 102–484, Div. A, Title X, § 1002(a)(1), Oct. 23, 1992, 106 Stat. 2480; amended Pub.L. 103–160, § 1104, Nov. 30, 1993, 107 Stat. 1749; Pub.L. 108–136, § 1031(a) Nov. 24, 2003, 117 Stat. 1596; Pub.L. 109–364, Div. A, Title X, § 1007, Oct. 17, 2006, 120 Stat. 2373.)

* * * * *

Chapter 403.—UNITED STATES MILITARY ACADEMY**§ 4342. Cadets: appointment; numbers, territorial distribution.**

1208

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the aca-

demic year) is 4,000. Subject to that limitation, cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examinations from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a “missing status” as defined in section 551(2) of title 37, and children of civilian employees who are in “missing status” as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated is binding upon the Secretary of the Army.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Three cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Three cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) Two cadets from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under Chapter 1223 of this title, except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Army from enlisted members of the Regular Army.

(3) 85 nominated by the Secretary of the Army from enlisted members of reserve components of the Army.

(4) 20 nominated by the Secretary of the Army, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Army in order of merit (prescribed pursuant to section 4343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of the Corps of Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b)(1), (2), (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Army may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy, as determined by the Secretary after consulting with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a)(3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a)(3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b)(2)–(4) are limited as follows:

- (A) 27 appointments under subsection (b)(2);
- (B) 27 appointments under subsection (b)(3); and
- (C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Superintendent shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Corps of Cadets, the Secretary of the Army may for any year (beginning with the 2001–2002 academic year) permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day. (Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 240; Sept. 2, 1958, Pub.L. 85–861, § 33(a)(26), 72 Stat. 1565; Sept. 14, 1962, Pub.L. 87–663, § 1(1), (2), 76 Stat. 547; March 3, 1964, Pub.L. 88–276, § 1(1), 78 Stat. 148; Oct. 13, 1966, Pub.L. 89–650, § 1(1)–(4), 80 Stat. 896; July 5, 1968, Pub.L. 90–374, 82 Stat. 283; Oct. 22, 1968, Pub.L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, Pub.L. 91–405, Title II, § 204(c), 84 Stat. 852; Aug. 7, 1972, Pub.L. 92–365, § 1, 86 Stat. 505; Nov. 29, 1973, Pub.L. 93–171, § 1(1)–(4), 87 Stat. 690; Oct. 7, 1975, Pub.L. 94–106, Title VIII, § 803(b)(1), 89 Stat. 538; Dec. 12, 1980, Pub.L. 96–513, Title V, Part B, § 512(13), 94 Stat. 2930; Dec. 24, 1980, Pub.L. 96–600, § 2(a), 94 Stat. 3493; Oct. 14, 1981, Pub.L. 97–60, Title II, § 203(a)(1), 95 Stat. 1006; Sept. 24, 1983, Pub.L. 98–94, Title X, Part A, § 1005(a)(1), (b)(1), 97 Stat. 660; Nov. 29, 1989, Pub.L. 101–189, Div. A, Title XVI, Part C, § 1621(a)(1), 103 Stat. 1602; Nov. 5, 1990, Pub.L. 101–510, Div. A, Title V, Part C, § 532(a)(1), 104 Stat. 1563; Nov. 30, 1993, Pub.L. 103–160, Div. A, Title V, Subtitle C, § 531, 107 Stat. 1657; Oct. 5, 1994, Pub.L. 103–337, Div. A, Title XVI, Subtitle C, § 1672(c)(3), 108 Stat. 3015; Feb. 10, 1996, Pub.L. 104–106, Div. A, Title V, Subtitle D, Part I, § 532(a), Title XV, § 1502(a)(1), 110 Stat. 314, 502; Nov. 18, 1997, Pub.L. 105–85, Div. A, Title X, Subtitle G, § 1073(a)(62), 111 Stat. 1903; Pub.L. 106–65, Div. A, Title V, § 531(b)(1), Title X, § 1067(1), Oct. 5, 1999, 113 Stat. 602, 774; Oct. 30, 2000, Pub.L. 106–398, § 1, Div. A, Title V, § 531(a), 114 Stat. 1654A–109; Pub.L. 108–136, Div. A, Title V, § 524(a), Title X, § 1031(a)(53), Nov. 24, 2003, 117 Stat. 1464, 1603; Pub.L. 109–364, Div. A, Title X, § 1071(a)(28), Oct. 17, 2006, 120 Stat. 2399.).

1209 § 4355. Board of Visitors.

- (a) A Board of Visitors to the Academy is constituted annually of—
 - (1) the chairman of the Committee on Armed Services of the Senate, or his designee;
 - (2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;
 - (3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Army, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses. (Aug. 10, 1956, ch. 1041, 70A Stat. 245; Dec. 23, 1980, Pub.L. 96-579, § 13(a), 94 Stat. 3369; Pub.L. 104-106, Div. A, Title X, § 1061(e)(2), Title XV, § 1502(a)(12), Feb. 10, 1996, 110 Stat. 443, 503; Pub.L. 106-65, Div. A, Title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

Chapter 443.—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

§ 4689. Transfer of material and equipment to the Architect of 1210 the Capitol.

The Secretary of the Army is authorized to transfer, without payment, to the Architect of the Capitol, such material and equipment, not required by the Department of the Army, as the Architect may request for use at the Capitol powerplant, the Capitol, and the Senate and House Office Buildings. (June 5, 1920, ch. 253, § 1, 41 Stat. 1035; Mar. 3, 1921, ch. 124, § 1, 41 Stat. 1291; Pub.L. 107-217, Sec. 2(1), Aug. 21, 2002, 116 Stat. 1294; Pub.L. 108-375, § 1084(d)(26), Oct. 28, 2004, 118 Stat. 2063.)

Chapter 603.—UNITED STATES NAVAL ACADEMY**1211 § 6954. Midshipmen: number.**

(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Navy under subsection (h).

(1) 65 selected in order of merit as established by competitive examination from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a “missing status” as defined in section 551(2) of title 37, and children of civilian employees who are in “missing status” as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Navy.

(2) Five nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten from each State, five of whom are nominated by each Senator from that State.

(4) Five nominated by each Representative in Congress.

(5) Five from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Three from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Three from Guam, nominated by the Delegate in Congress from Guam.

(9) Two from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) One from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition there may be appointed each year at the Academy midshipmen as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under Chapter 1223 of this title, except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Navy from enlisted members of the Regular Navy and the Regular Marine Corps.

(3) 85 nominated by the Secretary of the Navy from enlisted members of the Navy Reserve and the Marine Corps Reserve.

(4) 20 nominated by the Secretary of the Navy, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Naval Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Navy in order of merit (prescribed pursuant to section 6956 of this title) from qualified alternates nominated by person named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as midshipmen at the Academy children of persons who have been awarded the medal of honor for acts performed while in the armed forces.

(d) The Superintendent of the Naval Academy may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (8) of subsection (a) and may not cause the total strength of midshipmen at the Navy Academy to exceed the authorized number.

(e) The Secretary of the Navy may limit the number of midshipmen appointed under section (b)(5). When he does so, if the total number of midshipmen, upon admission of a new class at the Academy, will be more than 3,737, no appointment may be made under subsection (b)(2) or (3) of this section or section 6956 of this title.

(f) The Superintendent of the Naval Academy shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(g) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Brigade of Midshipmen, the Secretary of the Navy may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(h)(1) Beginning with the 2003–2004 academic year, the Secretary of the Navy may prescribe annual increases in the midshipmen strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 midshipmen or such lesser number as applies under paragraph (3) for that year. Such annual increases

may be prescribed until the midshipmen strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

(2) Any increases in the midshipmen strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under section 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the midshipmen strength limit and the new midshipmen strength limit, as so increased, and the amount of the increase in Senior Navy Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the midshipmen strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of midshipmen enrolled in the Navy Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection, the term "Midshipmen strength limit" means the authorized maximum strength of the Brigade of Midshipmen. (Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 429; Sept. 7, 1962, Pub.L. 87–651, Title I, § 124, 76 Stat. 514; Sept. 14, 1962, Pub.L. 87–663, § 1(3), 76 Stat. 547; March 3, 1964, Pub.L. 88–276, § 2, 78 Stat. 150; Oct. 13, 1996, Pub.L. 89–650, § 1(1)–(3), 80 Stat. 896; July 5, 1968, Pub.L. 90–374, 82 Stat. 283; Oct. 22, 1968, Pub.L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, Pub.L. 91–405, Title II, § 204(c), 84 Stat. 852; Aug. 7, 1972, Pub.L. 92–365, § 2, 86 Stat. 505; Nov. 29, 1973, Pub.L. 93–171, § 2(1)–(3), 87 Stat. 690; Oct. 7, 1975 Pub.L. 94–106, Title VIII, § 803(b)(1), 89 Stat. 538; Dec. 24, 1980, Pub.L. 96–600, § 2(b), 94 Stat. 3493; Oct. 14, 1981, Pub.L. 97–60, Title II, § 203(b)(2), 95 Stat. 1006; Oct. 12, 1982, Pub.L. 97–295, § 1(44), 96 Stat. 1298; Sept. 24, 1983, Pub.L. 98–94, Title X, Part A, § 1005(a)(2), (b)(2), 97 Stat. 660; Nov. 29, 1989, Pub.L. 101–189, Div. A, Title XVI, Part C, § 1621(a)(1), 103 Stat. 1602; Nov. 5, Pub.L. 101–510, Div. A, Title V, Part C, § 532(b)(1), 104 Stat. 1563; Nov. 30, 1993, Pub.L. 103–160, Div. A, Title V, Subtitle C, § 531, 107 Stat. 1657; Oct. 5, 1994, Pub.L. 103–337, Div. A, Title XVI, Subtitle C, § 1673(c)(2), 108 Stat. 3016; Feb. 10, 1996, Pub.L. 104–106, Div. A, Title V, Subtitle D, Part I, § 532(b), 110 Stat. 314; Nov. 18, 1997, Pub.L. 105–85, Div. A, Title X, Subtitle G, § 1073(a)(62), 111 Stat. 1903; Oct. 5, 1999, Pub.L. 106–65, Div. A, Title V, § 531(b)(2), 113 Stat. 602; Oct. 30, 2000; Pub.L. 106–398, § 1 [Div. A, Title V, § 531 (b), 114 Stat. 1654A–109]; Dec. 28, 2001, Pub.L. 107–107, Div. A, Title X, § 1048(g)(1), 115 Stat. 1228; Pub.L. 107–314, § 532(b)(1), Dec. 2, 2002, 116 Stat. 2545; Pub.L. 108–136, §§ 524(b), 1031(a)(55), Nov. 24, 2003, 117 Stat. 1464; Pub.L. 109–163, Div. A, Title V, § 515(b)(1)(Q), Jan. 6, 2006, 119 Stat. 3233.).

1212 § 6956. Midshipmen: nomination and selection to fill vacancies.

(a) If the annual quota of midshipmen from—

(1) enlisted members of the Regular Navy and the Regular Marine Corps;

(2) enlisted members of the Navy Reserve and the Marine Corps Reserve; or

(3) at large by the President;

is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(b) If it is determined that, upon the admission of a new class to the Academy, the number of midshipmen at the Academy will be below the authorized number, the Secretary may fill the vacancies by nominating additional midshipmen from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this subsection shall be from qualified alternates under clauses (2) through (8) of section 6954(a) of this title, and the remainder shall be from qualified candidates who competed for appointment under any other provision of law. An appointment of a nominee under this subsection is an additional appointment and is not in place of an appointment otherwise authorized by law.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the appointment of his successor. (Aug. 10, 1956, ch. 1041, 70A Stat. 430; March. 3, 1964, Pub.L. 88-276, § 3, 78 Stat. 151; July 5, 1968, Pub.L. 90-374, 82 Stat. 283; Nov. 29, 1973, Pub.L. 93-171, § 2(4), 87 Stat. 690; Oct. 7, 1975, Pub.L. 94-106, Title VIII, § 803(b)(2), 89 Stat. 538; Oct. 14, 1981, Pub.L. 97-60, Title II, § 206, 95 Stat. 1007; Nov. 5, 1990, Pub.L. 101-510, § 1322(a), 104 Stat. 1671, § 532(b), 104 Stat. 1563, 1671; Nov. 5, 1990, Pub.L. 101-510, § 532(b)(2), § 1322(a)(14), 104 Stat. 1563, 1671; Pub.L. 109-163, Div. A, Title V, § 515(b)(1)(R), Jan. 6, 2006, 119 Stat. 3233.)

§ 6968. Board of Visitors.

1213

(a) A Board of Visitors to the Naval Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Navy, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses. (Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 434; Dec. 23, 1980, Pub.L. 96-579, § 13(b), 94 Stat. 3369; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title X, Subtitle F, § 1061(c)(2), Title XV, § 1502(a)(12), 110 Stat. 443, 503; Pub.L. 106-65, Div. A, Title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

Chapter 903.—UNITED STATES AIR FORCE ACADEMY

1214 § 9342. Cadets: appointment; numbers, territorial distribution.

(a) The authorized strength of Air Force Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Air Force under subsection (j). Subject to that limitation, Air Force Cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examination from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a “missing status” as defined in section 551(2) of title 37, and children of civilian employees who are in “missing status” as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated is binding upon the Secretary of the Air Force.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Three cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Three cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) Two cadets from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the residents representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under Chapter 1223 of this title, except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Air Force from enlisted members of the Regular Air Force.

(3) 85 nominated by the Secretary of the Air Force from enlisted members of reserve components of the Air Force.

(4) 20 nominated by the Secretary of the Air Force, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Air Force Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Air Force in order of merit (prescribed pursuant to section 9343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of Air Force Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b) (1), (2), or (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Air Force may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy as determined by the Secretary after consulting with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a) (3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a) (3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointment under subsection (b)(2)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(2);

(B) 27 appointments under subsection (b)(3); and

(C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Superintendent shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of Air Force Cadets, the Secretary of the Air Force may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(j)(1) Beginning with the 2003–2004 academic year, the Secretary of the Air Force may prescribe annual increases in the cadet strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 cadets or such lesser number as applies under paragraph (3) for that year. Such annual increases

may be prescribed until the cadet strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

(2) Any increase in the cadet strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under sections 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the cadet strength limit and the new cadet strength limit, as so increased, and the amount of the increase in Senior Air Force Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the cadet strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of cadets enrolled in the Air Force Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection the term "cadet strength limit" means the authorized maximum strength of Air Force Cadets of the Academy.

(Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 563; Sept. 14, 1962, Pub.L. 87–663, § 1(5), (6), 76 Stat. 547; March 3, 1964, Pub.L. 88–276, § 4(1), 78 Stat. 151; Oct. 13, 1966, Pub.L. 89–650, § 1(1)–(3), (5), 80 Stat. 896; July 5, 1968, Pub.L. 90–374, 82 Stat. 283; Oct. 22, 1968, Pub.L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, Pub.L. 91–405, Title II, § 204(c), 84 Stat. 852; Aug. 7, 1972, Pub.L. 92–365, § 1(3), 86 Stat. 505; Nov. 29, 1973, Pub.L. 93–171, § 3(1)–(4), 87 Stat. 690; Oct. 7, 1975, Pub.L. 94–106, Title VIII, § 803(b)(1), 89 Stat. 538; Dec. 12, 1980, Pub.L. 96–513, Title V, Part B, § 514(11), 94 Stat. 2935; Dec. 4, 1980, Pub.L. 96–600, § 2(c), 94 Stat. 3493; Oct. 14, 1981, Pub.L. 97–60, Title II, § 203(c)(1), 95 Stat. 1006; Sept. 24, 1983, Pub.L. 98–94, Title X, Part A, § 1005(a)(3), (b)(3), 97 Stat. 660, 661; Nov. 29, 1989, Pub.L. 101–189, Div. A, Title XVI, Part C, § 1621(a)(1), 103 Stat. 1602; Nov. 5, 1990, Pub.L. 101–510, Div. A, Title V, Part C, § 532(c)(1), 104 Stat. 1563; Nov. 30, 1993, Pub.L. 103–160, Div. A, Title V, Subtitle C, § 531, 107 Stat. 1657; Oct. 5, 1994, Pub.L. 103–337, Div. A, Title XVI, Subtitle D, § 1674(c)(3), 108 Stat. 3017; Feb. 10, 1996, Pub.L. 104–106, Div. A, Title V, Subtitle D, Part I, § 532(c), Title XV, § 1502(a)(1), 110 Stat. 315, 502; Nov. 18, 1997, Pub.L. 105–85, Div. A, Title X, Subtitle G, § 1073(a)(62), 111 Stat. 1903; Pub.L. 106–65, Div. A, Title V, § 531(b)(3), Title X, § 1067(1), Oct. 5, 1999, 113 Stat. 602, 774; Oct. 30, 2000, Pub.L. 106–398, § 1, Div. A, Title V, § 531(c) 114 Stat. 1654A–110; Pub.L. 107–314, Div. A, Title V, § 532(c), Dec. 2, 2002, 116 Stat. 2546; Pub.L. 108–136, §§ 824(c), 1031(a)(58), Nov. 24, 2003, 117 Stat. 1464, 1063; Pub.L. 109–364, Div. A, Title X, § 1071(a)(38), Oct 17, 2006, 120 Stat. 2400.).

§ 9355. Board of Visitors.

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(a) A Board of Visitors to the Academy is constituted annually. The Board consists of the following members:

- (1) Six persons designated by the President.
- (2) The chairman of the Committee on Armed Services of the House of Representatives, or his designee.

(3) Four persons designated by the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives and the fourth of whom may not be a member of the House of Representatives.

(4) The chairman of the Committee on Armed Services of the Senate, or his designee.

(5) Three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate.

(b)(1) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is designated. The President shall designate persons each year to succeed the members designated by the President whose terms expire that year.

(2) At least two of the members designated by the President shall be graduates of the Academy.

(c)(1) If a member of the Board dies or resigns or is terminated as a member of the Board under paragraph (2), a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(2)(A) If a member of the Board fails to attend two successive Board meetings, except in a case in which an absence is approved in advance, for good cause, by the Board chairman, such failure shall be grounds for termination from membership on the Board. A person designated for membership on the Board shall be provided notice of the provisions of this paragraph at the time of such designation.

(B) Termination of membership on the Board under subparagraph (A)—

(i) in the case of a member of the Board who is not a member of Congress, may be made by the Board chairman; and

(ii) in the case of a member of the Board who is a member of Congress, may be made only by the official who designated the member.

(C) When a member of the Board is subject to termination from membership on the Board under subparagraph (A), the Board chairman shall notify the official who designated the member. Upon receipt of such a notification with respect to a member of the Board who is a member of Congress, the official who designated the member shall take such action as that official considers appropriate.

(d) The Board should meet at least four times a year, with at least two of those meetings at the Academy. The Board or its members may make other visits to the Academy in connection with the duties of the Board. Board meetings should last at least one full day. Board members shall have access to the Academy grounds and the cadets, faculty, staff, and other personnel of the Academy for the purposes of the duties of the Board.

(e)(1) The Board shall inquire into the morale, discipline, and social climate, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(2) The Secretary of the Air Force and the Superintendent of the Academy shall provide the Board candid and complete disclosure, con-

sistent with applicable laws concerning disclosure of information, with respect to institutional problems.

(3) The Board shall recommend appropriate action.

(f) The Board shall prepare a semiannual report containing its views and recommendations pertaining to the Academy, based on its meeting since the last such report and any other considerations it determines relevant. Each such report shall be submitted concurrently to the Secretary of Defense, through the Secretary of the Air Force, and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing duties as a member of the Board, each member of the Board and each adviser shall be reimbursed under Government travel regulations for travel expenses. (Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 567; Dec. 23, 1980, Pub.L. 95-579, § 13(c), 94 Stat. 3369; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title X, Subtitle F, § 1061(e)(2), Title XV, § 1502(a)(12), 110 Stat. 443, 503; Pub.L. 106-65, Div. A, Title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub.L. 108-375, Div. A, Title V, § 543, Oct. 28, 2004, 118 Stat. 1904; Pub.L. 109-364, Div. A, Title X, § 1071(a)(39), Oct. 17, 2006, 120 Stat. 2400.)

Chapter 1013.—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

§ 10541. National Guard and reserve component equipment: annual report to Congress.

(a) The Secretary of Defense shall submit to the Congress each year, not later than February 15, a written report concerning the equipment of the National Guard and the reserve components of the armed forces for each of the three succeeding fiscal years.

(b) Each report under this section shall include the following:

(1) Recommendations as to the type and quantity of each major item of equipment which should be in the inventory of the Selected Reserve of the Ready Reserve of each reserve component of the armed forces.

(2) A statement of the quantity and average age of each type of major item of equipment which is expected to be physically available in the inventory of the Selected Reserve of the Ready Reserve of each reserve component as of the beginning of each fiscal year covered by the report.

(3) A statement of the quantity and cost of each type of major item of equipment which is expected to be procured for the Selective Reserve of the Ready Reserve of each reserve component from commercial sources or to be transferred to each such Selected Reserve from the active-duty components of the armed forces.

(4) A statement of the quantity of each type of major item of equipment which is expected to be retired, decommissioned, transferred, or otherwise removed from the physical inventory of the Selected Reserve of the Ready Reserve of each reserve component and the plans for replacement of that equipment.

(5) A listing of each major item of equipment required by the Selected Reserve of the Ready Reserve of each reserve component indicating—

- (A) the full war-time requirement of that component for that item, shown in accordance with deployment schedules and requirements over successive 30-day periods following mobilization;
 - (B) the number of each such item in the inventory of the component;
 - (C) a separate listing of each such item in the inventory that is a deployable item and is not the most desired item;
 - (D) the number of each such item projected to be in the inventory at the end of the third succeeding fiscal year; and
 - (E) the number of nondeployable items in the inventory as a substitute for a required major item of equipment.
- (6) A narrative explanation of the plan of the Secretary concerned to provide equipment needed to fill the war-time requirement for each major item of equipment to all units of the Selected Reserve, including an explanation of the plan to equip units of the Selected Reserve that are short of major items of equipment at the outset of war.
- (7) For each item of major equipment reported under paragraph (3) in a report for one of the three previous years under this section as an item expected to be procured for the Selected Reserve or to be transferred to the Selected Reserve, the quantity of such equipment actually procured for or transferred to the Selected Reserve.
- (8) A statement of the current status of the compatibility of equipment between Army reserve components and active forces of the Army, the effect of that level of incompatibility on combat effectiveness, and a plan to achieve full equipment compatibility.
- (c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the annual Five Year Defense Program Procurement Annex prepared by the Department of Defense. (Added Pub.L. 101–510, §1483(a), Nov. 5, 1990, 104 Stat. 1714 [former §115(a)(2), (3)]; amended Pub.L. 102–484, §1134, Oct. 23, 1992, 106 Stat. 2541; transferred, redesignated §10541, and amended Pub.L. 103–337, §1661(d)(2), Oct. 5, 1994, 108 Stat. 2982.)